Supreme Court, U.S.
FILED
AUG 21 1992
OFFICE OF THE CLERK

No. 92-144

IN THE

Supreme Court of the United States

OCTOBER TERM, 1992

LOCAL 1814, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO,

Petitioner,

v.

NEW YORK SHIPPING ASSOCIATION, INC., AND UNITED STATES OF AMERICA,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF OF RESPONDENT NEW YORK SHIPPING ASSOCIATION, INC. IN OPPOSITION TO PETITION

CONSTANTINE P. LAMBOS (Counsel of Record)
DONATO CARUSO
LAMBOS & GIARDINO
29 Broadway (9th Floor)
New York, New York 10006
(212) 943-2470

Attorneys for Respondent
New York Shipping Association, Inc.

Question Presented

Before addressing the questions framed in the petition, the following threshold question must first be decided:

> Does the Norris-LaGuardia Act prohibit enjoining an arbitration that threatens to impair the authority of a federal district court in a related civil action under the Racketeer Influenced and Corrupt Organizations Act ("RICO") to decide the validity of a consent judgment, if no arbitrable labor dispute can arise until the court in the related RICO action has adjudicated the meaning and validity of the consent judgment?

TABLE OF CONTENTS

	PAGE(S)
Introduction	1
Opinion Below	2
Statement of the Case	2
RICO Action	2
NYSA Consent Judgment	4
Labor Action	5
District Court Decision	8
Court of Appeals Decision	9
Summary of Argument	10
Reasons For Denying The Writ	11
1. No Decisional Conflict	11
2. No Paramount Federal Question	14
Conclusion	19

TABLE OF AUTHORITIES

PAGE(S)

Cases

50 Mile Container Rules, 21 Shp'g Reg. Rep. (P&F) 544 (FMC 1982), *pet. for review denied sub nom. New York Shipping Ass'n* v. *FMC*, 854 F.2d 1338 (D.C. Cir. 1988), *cert. denied*, 488 U.S. 1041 (1989) 9, 13, 13n

Allen Bradley Co. v. *Local 3, IBEW*, 325 U.S. 797 (1945) ... 13n

Alpha Beta Co. v. *Retail Store Employees Local* 428, 671 F.2d 1247 (9th Cir. 1982) 17n

Boys Markets, Inc. v. *Retail Clerks Local 770*, 398 U.S. 235 (1970) ..... *passim*

Brotherhood of R.R. Trainmen v. *Chicago R. & Ind. R.R.*, 353 U.S. 30 (1957) 13

Buffalo Forge Co. v. *United Steelworkers*, 428 U.S. 397 (1976) 8n

Burlington N.R.R. v. *Brotherhood of Maintenance of Way Employees*, 481 U.S. 429 (1987) 13

Burlington Truck Lines v. *United States*, 371 U.S. 156 (1962) 13n

Chicago Typographical Union No. 16 v. *Chicago Sun-Times, Inc.*, 860 F.2d 1420 (7th Cir. 1988) 17n

Chicago Typographical Union No. 16 v. *Chicago Sun-Times, Inc.*, 935 F.2d 1501 (7th Cir. 1991) 17n

Consolidated Express, Inc. v. *New York Shp'g Ass'n*, 602 F.2d 494 (3d Cir. 1979), *vacated and remanded*, 448 U.S. 902 (1980), *on remand*, 641 F.2d 90 (3d Cir.), *mandamus & prohibition denied sub nom. In re International Longshoremen's Ass'n*, 451 U.S. 905 (1981) 13n

De Veau v. *Braisted*, 363 U.S. 144 (1960) 4n

PAGE(S)

Graham v. *Brotherhood of Locomotive Firemen & Enginemen*, 338 U.S. 232 (1949) 13

Intercontinental Container Transp. Corp. v. *New York Shipping Ass'n*, 426 F.2d 884 (2d Cir. 1970) ... 13n

Iron Arrow Honor Soc'y v. *Heckler*, 464 U.S. 67 (1983) 8n

Jacksonville Bulk Terminals, Inc. v. *International Longshoremen's Ass'n*, 457 U.S. 702 (1982) 8n, 9

Los Angeles Meat & Provision Drivers Local 626 v. *United States*, 371 U.S. 94 (1962) 13n

Maryland v. *United States*, 381 U.S. 41 (1965) 19

Massachusetts Trustees v. *United States*, 377 U.S. 235 (1964) . 19

McCray v. *New York*, 461 U.S. 961 (1983) 19n

McLean Trucking Co. v. *United States*, 321 U.S. 67 (1944) ... 12

Morton v. *Mancari*, 417 U.S. 535 (1974) 10, 12

National Ass'n of Letter Carriers v. *Sombrotto*, 449 F.2d 915 (2d Cir. 1971) 9

Niagara Hooker Employees Union v. *Occidental Chem. Corp.*, 935 F.2d 1370 (2d Cir. 1991) 6n

Pittsburgh & Lake Erie R.R. v. *Railway Labor Executives' Ass'n*, 491 U.S. 490 (1989) 10, 13

Radzanower v. *Touche Ross & Co.*, 426 U.S. 148 (1976) 12

Rice v. *Sioux City Memorial Park Cemetery, Inc.*, 349 U.S. 70 (1955) 18

Silver v. *New York Stock Exchange*, 373 U.S. 341 (1963) 12

Southern S.S. Co. v. *NLRB*, 316 U.S. 31 (1942) 12

The Monrosa v. *Carbon Black Export, Inc.*, 359 U.S. 180 (1959) 18n

PAGE(S)

United Mine Workers v. *Pennington*, 381 U.S. 657 (1965) ... 13n

United States v. *ABC Containerline N.V.*, 572 F. Supp. 150 (S.D.N.Y.), *appeal dismissed*, No. 83-6354 (2d Cir. Dec. 13, 1983) 13n

United States v. *BNS, Inc.*, 858 F.2d 456 (9th Cir. 1988) 11

United States v. *IBT (Star Market Co.)*, 954 F.2d 801 (2d Cir. 1992), *cert. denied*, 112 S. Ct. 2993 (U.S. June 22, 1992) (No. 91-1675) 16n

United States v. *IBT (Yellow Freight Systems, Inc.)*, 948 F.2d 98 (2d Cir. 1991), *petition for cert. filed*, 60 U.S.L.W. 3843 (U.S. May 29, 1992) (No. 91-1938) ... 16n

Statutes

18 U.S.C.A. § 1964 (West 1984) 5n. 15n, 16

28 U.S.C.A. § 1651 (West 1966) 9, 11

29 U.S.C.A. § 101 (West 1973) 12

29 U.S.C.A. § 104 (West 1973) 12

N.Y. Unconsol. Laws § 9829 (McKinney 1974) 14n

N.Y. Unconsol. Laws § 9831 (McKinney 1974) 14n

Miscellaneous

JOHN DONNE, Poem No. 17, DEVOTIONS UPON EMERGENT OCCASSIONS (1924) 12

Sup. Ct. R. 29.1 Corporate Disclosure Statement

Respondent New York Shipping Association, Inc. ("NYSA") is a New York not-for-profit, incorporated membership association of vessel carriers, stevedoring companies, and other maritime concerns which employ longshore workers at piers and waterfront terminals in the Port of New York and New Jersey. NYSA hereby certifies that it has no corporate parent or subsidiary.

No. 92-144

IN THE

Supreme Court of the United States

OCTOBER TERM, 1992

LOCAL 1814, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO,

Petitioner,

v.

NEW YORK SHIPPING ASSOCIATION, INC., AND UNITED STATES OF AMERICA,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF OF RESPONDENT NEW YORK SHIPPING ASSOCIATION, INC. IN OPPOSITION TO PETITION

INTRODUCTION

In a case involving the efforts of the United States Government to use the civil enforcement provisions of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C.A. §§ 1961-1968 (West 1984 & Supp. 1992), to purge a handful of longshore union locals in a single port of the corrupting influence of organized crime, the Second Circuit prevented the Norris-LaGuardia Act ("NLGA"), 29 U.S.C.A. §§ 101-115 (West 1973 & Supp. 1992), from being misused to thwart the congressional mandates and policies promul-

gated by RICO. The decision of the court of appeals does not conflict with any decision of this Court or any other court and resolves an issue of limited scope and importance in a manner consistent with settled principles of law. Review by this Court, therefore, is unwarranted.

OPINION BELOW

The decision of the court of appeals in this case is now reported at 965 F.2d 1224.

STATEMENT OF THE CASE

RICO Action

In 1990 Respondent United States of America (hereinafter the "Government") instituted a civil RICO action against six locals of the International Longshoremen's Association, AFL-CIO ("ILA"), including petitioner, Local 1814, International Longshoreman's Association, AFL-CIO (herein "Local 1814"), various officers of these union locals, and various individuals alleged to be members of three La Cosa Nostra organized crime groups. *See United States* v. *Local 1804-1, Int'l Longshoremen's Ass'n*, No. 90-Civ.-0963 (LBS) (S.D.N.Y. filed Feb. 14, 1990) (herein "RICO Action"). Respondent New York Shipping Association, Inc. ("NYSA")[1] was dragged into the dispute not because NYSA or its members had committed any RICO violations but because the Government considered NYSA, albeit a nominal party, necessary to effectuate complete relief (A-4).[2] NYSA was designated in the RICO complaint as a class representative of employers on the waterfront (A-4). The complaint asked for the issuance of a permanent injunction barring individual defendants and

[1] NYSA is a New York not-for-profit, incorporated membership association of vessel carriers, stevedoring companies, and other maritime concerns. NYSA's members employ longshoremen and related craft employees at piers and waterfront terminals to handle waterborne freight transported to and from the Port of New York and New Jersey (hereinafter "Port"). NYSA is a multiemployer bargaining representative, which negotiates and administers on behalf of its members collective bargaining agreements with the ILA, establishing the terms and conditions of employment for longshore workers in the Port.

[2] References to the opinion of the court of appeals in this case are cited to the pages of Appendix A to the Petition for a Writ of Certiorari (herein "Pet.").

members of the three organized crime groups from being employed by or having dealings with any member of the waterfront employer class.

The relief sought by the Government also included a request for the appointment of an administrator to monitor and oversee the affairs and operations of waterfront unions and employers until such time as the waterfront is free of organized crime influence. The complaint asked that the costs of this waterfront czar be imposed on the defendants without any indication that any nominal defendant would be exempt from this substantial monetary burden. Shortly after commencement of the RICO Action the Government stipulated to suspend the litigation *vis-à-vis* NYSA. Proceedings continued against the other defendants.

In 1991 the bulk of the RICO litigation was resolved by the entry of a series of consent and default judgments involving all six union locals, including Local 1814, their union officers, and most of the individual defendants (A-5). Neither NYSA nor any of the other employer defendants were parties to these judgments. Several, including the one involving Local 1814, preclude individual defendants from future employment or business dealings with any entity that does business on the waterfront. The Local 1814 consent judgment also contains the union's consent to the appointment of a monitor who has the power to discipline members, including expulsion from the union and hence disqualification from waterfront employment, for any offense involving membership in or knowing and improper association with La Cosa Nostra or any other criminal group.

On April 2, 1991, the Government moved to certify an Employer Class consisting of all employers who engage in interstate commerce that affects, directly or indirectly, the Waterfront, which the Government defined as the Port of New York and New Jersey, "an integrated commercial marketplace composed of several separate ports occupying a common harbor and encompassing some 1500 square miles and 234 municipalities." The Government reasoned that this employer class certification was necessary

> because the interests of the class will be affected by the proposed injunctive decree. For example, the injunction sought against the

> individual defendants would prohibit named individual defendants and members of the defendant organized crime group classes from holding any employment on the Waterfront. The members of the defendant employer class may wish to employ some of these individuals. Thus, the employer class should be certified so that the Court may fashion complete and effective relief. When and if the Court issues injunctive relief, both the individuals and the defendant employer class will be bound by the injunctive decree.

See Memorandum of Law in Support of the Government's Motion to Certify Four Defendant Classes at 2-3, *United States* v. *Local 1804-1, Int'l Longshoremen's Ass'n*, No. 90-Civ.-0963 (LBS) (S.D.N.Y. filed Apr. 2, 1991).

Faced with the potentially monumental administrative burden of acting as class representative for a huge, amorphous, and limitless group of waterfront employers and the threat of having to pick up the tab for yet another costly bureaucracy,[3] NYSA and its members initiated settlement discussions with the Government, which culminated in a consent judgment (hereinafter "NYSA Consent Judgment").

NYSA Consent Judgment

In the NYSA Consent Judgment the Government agrees to discontinue the RICO Action against NYSA.[4] In turn NYSA agrees that it will not knowingly employ for as long as the injunction remains in effect any individual appearing on a court-approved list of persons enjoined from employment on the waterfront (A-7). This list is to be compiled by the Government and may include (a) individual defendants found in the RICO Action to have committed RICO violations, (b) individuals determined by federal courts to be members of orga-

[3] The longshore industry pays more than $6 million a year to fund the operations of the Waterfront Commission of New York Harbor, a bi-state agency formed in 1953 to eradicate crime, corruption, and racketeering on the New York/New Jersey waterfront. *See De Veau* v. *Braisted*, 363 U.S. 144, 147-51 (1960); N.Y. Unconsol. Laws §§ 9801-9937 (McKinney 1974 & Supp. 1992).

[4] In the NYSA Consent Judgment the term "NYSA" includes the association and those of its members who agree to be bound by the consent judgment.

nized crime groups, and (c) individuals found to have aided and abetted those in classes (a) and (b) in committing federal felonies in the Port (A-6).[5]

The NYSA Consent Judgment was a compromise of the conflicting positions advocated by the Government and NYSA concerning employer class certification. NYSA was relieved of any obligation to act as a representative of any employer class other than NYSA's own members, and any notion that NYSA and its members would have to pay for the costs of a waterfront administrator was abandoned. In exchange the Government received precisely what it had sought in its class certification: a commitment by NYSA's members, who were not parties in the RICO Action, that they would abide by any federal court judgment enjoining disqualified individuals from employment on the waterfront.

Labor Action

The NYSA Consent Judgment triggered the filing by Local 1814 of a grievance under the longshore collective bargaining agreement in effect in the Port (A-7).[6] Local 1814 contended that the NYSA Consent Judgment, if approved, "could create rights and duties that would override the provisions of the collective bargaining agreement," *see* Local 1814's Principal Appeal Brief at 7, *Local 1814, Int'l*

[5] Formulation of the list is a multi-step process, which provides ample opportunity for individuals to contest their inclusion on the list:

Step 1: The RICO Action must be completed;
Step 2: One or more individuals must meet the qualifications for inclusion in class (a), (b), or (c);
Step 3: The Government must obtain a court order in accordance with 18 U.S.C. § 1964(a) approving the standards and procedures for determining inclusion in class (b) or (c);
Step 4: The Government "may provide to NYSA a list" with notice to any individual included on the list, who would then have the right to raise any challenges he may have;
Step 5: The court must approve the list and issue an order, authorized under 18 U.S.C. § 1964(a), enjoining those on the list from seeking, obtaining, or remaining in employment on the waterfront; and
Step 6: NYSA agrees to post the injunction and to be bound by its terms.

[6] NYSA on behalf of its members and ILA on behalf of its affiliated locals, including Local 1814, negotiate this labor contract, which prescribes the terms and conditions of employment for waterfront workers in the Port.

Longshoremen's Ass'n v. *New York Shipping Ass'n*, 965 F.2d 1224 (2d Cir. filed Feb. 18, 1992) (No. 92-6018), and NYSA would be responsible for this breach of the labor contract (A-7). On December 3, 1991, the grievance was considered by the joint labor-management panels empowered by the longshore labor contract to decide grievances. The panels deadlocked, and the grievance was referred to an outside arbitrator (A-7).[7]

Two days after the deadlock, Local 1814 commenced this action against NYSA for a reverse *Boys Markets* injunction (herein "Labor Action"),[8] seeking to thwart the district court's approval of the NYSA Consent Judgment in the companion RICO Action. The only relief Local 1814 sought was an order restraining NYSA and its members from engaging in the following actions to consummate the NYSA Consent Judgment:

1. "circulating said proposed consent judgment among NYSA's members for agreement thereto or soliciting their agreement thereto;"

2. "a member's subscribing to said agreement or agreeing to be listed on Exhibit A thereof;"

3. "delivering an executed copy of the consent judgment to the office of the United States Attorney for the Southern District of New York;"

---

[7] An arbitrator was prepared to conduct the arbitration on the afternoon of December 20, 1991. However, on that same day the district court stayed the arbitration *pendente lite* until a determination of Local 1814's motion for a reverse *Boys Markets* injunction (A-9). Local 1814 appealed this temporary stay, but that earlier appeal was withdrawn. *Local 1814, Int'l Longshoremen's Ass'n* v. *New York Shipping Ass'n*, No. 91-6316 (2d Cir. filed Dec. 23, 1991).

[8] *Boys Markets, Inc.* v. *Retail Clerks Local 770*, 398 U.S. 235 (1970), permits federal courts to enjoin union strikes in violation of labor contract no-strike clauses, pending resolution in arbitration of the underlying disputes that triggered the work stoppages. The courts have sanctioned in extraordinary cases a "reverse" version of this *Boys Markets* principle to allow injunctive relief at the behest of a union against the employer party to a collective bargaining agreement to maintain the *status quo* pending resolution in arbitration of a union grievance under the labor contract. *See, e.g., Niagara Hooker Employees Union* v. *Occidental Chem. Corp.*, 935 F.2d 1370 (2d Cir. 1991).

4. "presenting said agreement to Judge Sand for his approval;" and

5. "any other act designed to complete and effectuate said consent judgment pending final disposition of this case or a final resolution of Local 1814's grievance."[9]

Local 1814 withdrew its application for a proposed temporary restraining order ("TRO") containing the Five Restraints, when NYSA and the Government[10] stipulated to withhold submission of the NYSA Consent Judgment for approval in the RICO Action pending disposition of the Labor Action (A-8). NYSA then carried out the steps contemplated by the NYSA Consent Judgment. NYSA completed circulation of the consent judgment to its members for their individual approval. Those members joining in the consent judgment informed NYSA in writing of their agreement to be bound and their consent to be included in the list of subscribing members. NYSA delivered the list of subscribing members to the Government.[11]

NYSA's delivery to the Government of the executed consent judgment consummated acceptance by NYSA and its subscribing members of the terms of that settlement agreement and caused a complete transformation of the litigation. Nothing in the consent judgment bestowed any right or veto power upon NYSA to prevent the Government from submitting the consent judgment to the court for approval in the RICO Action. Whatever right Local 1814 might once have had to the Five Restraints against NYSA became academic, when Local 1814 allowed NYSA to consummate the challenged activities. Local 1814's dispute was now no longer with NYSA but with the Government, which alone controlled that which Local 1814 sought to preclude—submission of the NYSA Consent Judgment for court approval in the RICO Action. Any relief that might be available to

[9] For ease of reference the precise injunctive relief Local 1814 sought will henceforth be referred to as the "Five Restraints."

[10] Local 1814 consented to the Government's intervention in the Labor Action (A-8).

[11] All of these steps for consummation of the NYSA Consent Judgment, except for the receipt of NYSA members' consents and the delivery to the Government of the list of subscribing members, were completed before Local 1814 commenced the Labor Action.

prevent court approval of the NYSA Consent Judgment now had to be sought against the Government, which had sole and exclusive control over the destiny of that consent judgment.[12]

The litigation's metamorphosis signaled the start of a race by Local 1814 to conclude the arbitration of its grievance before any consideration by the district court of not only the consent judgment in the RICO Action but also Local 1814's complaint for a reverse *Boys Markets* injunction in the Labor Action.[13] The race ended, when the district court permanently enjoined the arbitration (A-12).[14]

District Court Decision

Local 1814 claimed that the arbitration of its grievance (of the issue whether NYSA's consummation of the consent judgment enlarged the power of the district court under RICO to enjoin certain individuals from waterfront employment and thereby violated the longshore labor contract) must precede consideration of the meaning

---

[12] Under these changed circumstances, the controversy presented by Local 1814's complaint in the Labor Action became moot, and the complaint had to be dismissed, since the legal and factual predicates both for the court's exercise of jurisdiction and for the substantive claims asserted were no longer viable. *See Iron Arrow Honor Soc'y* v. *Heckler*, 464 U.S. 67, 70-71 (1983) (per curiam). Indeed, in its appeal to the Second Circuit Local 1814 abandoned any challenge to the district court's denial of Local 1814's request for a reverse *Boys Markets* injunction (A-16).

[13] NYSA found itself being taken along for the ride. Nevertheless, it could not afford to challenge the arbitration lest it precipitate a nonenjoinable strike that could cause substantial, devastating, and irreparable economic harm to the Port. *See, e.g., Jacksonville Bulk Terminals, Inc.* v. *International Longshoremen's Ass'n*, 457 U.S. 702, 720-24 (1982) (no injunction may issue to prohibit a work stoppage over a non-arbitrable dispute); *Buffalo Forge Co.* v. *United Steelworkers*, 428 U.S. 397, 406-13 (1976) (same).

[14] In light of Local 1814's expressed intention to seek in the Second Circuit a stay of the injunction pending appeal, the district court scheduled a hearing in the RICO Action on the merits of the consent judgment to take place two weeks after disposition of the stay motion. This schedule was revised to two weeks after a decision on the merits of the appeal, when a motions panel of the Second Circuit expedited the appeal because of the mutual commitments of the parties not to proceed with either the arbitration or the approval of the NYSA Consent Judgment until the appeal was concluded. The Second Circuit's stay of mandate pending disposition by this Court led the district court to postpone consideration of the NYSA Consent Judgment in the RICO Action until this Court's resolution of Local 1814's certiorari petition.

and validity of the consent judgment by the court in the RICO Action. By orchestrating the interplay of the judicial and arbitral proceedings, Local 1814 hoped to preempt judicial consideration of the consent judgment by convincing an arbitrator to order NYSA and its members to cease and desist from submitting the consent judgment to the district court for its approval.

The issue boiled down to a simple choice of forum—which proceeding should go first: the arbitration or the approval of the consent judgment. To achieve its strategic objective of maneuvering the arbitration into first place, Local 1814 raised an alleged jurisdictional bar. It contended that the NLGA prohibited the district court from safeguarding its jurisdiction in the RICO action by exercising its authority under the All Writs Act, 28 U.S.C.A. § 1651(a) (West 1966), to enjoin the arbitration.

The district court disagreed. It concluded "that it had jurisdiction under the RICO statute (utilizing its concomitant powers to preserve its jurisdiction under the All Writs Act) to enjoin the arbitration because RICO—a specific federal statute designed to further an overriding congressional concern—falls within the second decisional exception 'carved out' of the Norris-LaGuardia Act" (A-28). This second exception enables federal courts unhindered by the NLGA's anti-injunction provisions to exercise equity jurisdiction when necessary to carry out the purposes and mandates of another federal statute (A-27-28). *See Jacksonville Bulk Terminals, Inc.* v. *International Longshoremen's Ass'n*, 457 U.S. 702, 717 n.17 (1982); *National Ass'n of Letter Carriers* v. *Sombrotto*, 449 F.2d 915, 919 (2d Cir. 1971); *50 Mile Container Rules*, 21 Shp'g Reg. Rep. (P&F) 544, 559 (FMC 1982), *pet. for review denied sub nom. New York Shipping Ass'n* v. *FMC*, 854 F.2d 1338 (D.C. Cir. 1988), *cert. denied*, 488 U.S. 1041 (1989).

Court of Appeals Decision

The court of appeals affirmed the district court's disposition. The appeals court viewed its role as that of discerning the intent of Congress when dealing with the interplay of two federal legislative schemes (A-30). The principle chosen by the Second Circuit to guide its analysis is the rule that when the two federal statutes are

incompatible and "there is no clear intention otherwise, a specific statute will not be controlled or nullified by a general one, regardless of the priority of enactment" (A-31, quoting *Morton* v. *Mancari*, 417 U.S. 535, 550-51 (1974)). Indeed, the court of appeals paid heed to this Court's teaching that the NLGA "must give way when necessary to enforce a duty imposed by another statute" (A-32, quoting *Pittsburgh & Lake Erie R.R.* v. *Railway Labor Executives' Ass'n*, 491 U.S. 490, 514 (1989); *see also* A-27-28, noting the second exception that removes NLGA's limitations on the injunctive powers of federal courts "when necessary to reconcile Norris-LaGuardia with the mandates of a specific federal statute").

A meticulous examination by the Second Circuit of both the statutory language and legislative history of RICO (A-28-30) provided convincing evidence that Congress expected federal courts to issue RICO injunctions in labor disputes in order to achieve one of the prime objectives of the RICO legislation: purging labor unions of the menace of organized crime. The court of appeals concluded that in light of the congressional design embodied in RICO Congress did not intend the NLGA's 60-year-old, general prohibition against injunctions in labor disputes to preclude a federal court from exercising RICO's more specific grant of injunctive power in a labor setting (A-30-33). This approach, which sanctions the injunction against the arbitration sought by Local 1814, assures fulfillment of the important and compelling governmental interests served by the remedial provisions of RICO, since only federal courts, not private arbitrators, can properly consider the public policy concerns that under RICO must be brought into play in resolving the real dispute in this case (A-33-34).

SUMMARY OF ARGUMENT

The court of appeals fashioned a narrow, carefully circumscribed principle that effectuates Congress's intent to allow federal courts, unencumbered by the NLGA, to grant such injunctive relief as may be reasonable and necessary to further RICO's remedial purposes. No court has disagreed with the Second Circuit's accommodation of these two statutory schemes. No court has ever invoked the NLGA to nullify the remedial powers RICO invests in the federal judiciary. Local 1814's strained efforts to fabricate a legal conflict are unavailing:

there is no decision of this Court or of any other court with which the Second Circuit's decision conflicts.

Harmonization of federal statutes is a common judicial function. Indeed, the NLGA itself has frequently had to be cabined to accommodate enforcement of other federal statutes, including both labor and non-labor enactments. This case involves the first instance in which RICO and the NLGA have been the subject of this reconciliation process. However, there is no indication that the interplay of RICO and the NLGA is a recurring phenomenon that will ever develop into a significant question of federal law. There are no other RICO/NLGA cases on the horizon. Indeed, the very concerns that induced petitioner to initiate this litigation may be assuaged by the ultimate disposition of the companion RICO case. All signals caution against hasty intervention by this Court into consideration of an issue that is of concern only to the litigants in this case and does not rise to the level of a substantial question of public importance.

REASONS FOR DENYING THE WRIT

Local 1814 proffers two reasons why review by this Court is appropriate: (1) a conflict with prior decisions of this Court and other courts of appeals, *see* Pet. at 12-22, and (2) the presence of an important question of federal law, *see* Pet. at 22-23. Neither reason has any substance.

1. No Decisional Conflict

The All Writs Act empowers federal courts to issue "all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." 28 U.S.C.A. § 1651(a) (West 1966). The district court presided over both the RICO Action and this case, and the litigants here were also parties in the RICO Action. When confronted with Local 1814's attempt to use arbitration as a means of preempting the court's authority in the RICO Action to pass judgment on the merits of the NYSA Consent Judgment, it was a perfectly legitimate exercise of its All Writs powers for the district court to enjoin the arbitration in order to preserve its jurisdictional prerogative in the RICO Action. *United States* v. *BNS, Inc.*, 858 F.2d 456, 461-62 (9th Cir. 1988) (issuance of an injunction pursuant to the

All Writs Act is appropriate to preserve the court's authority to consider approval of a proposed consent decree).

Local 1814's objection to the injunction in this case rests on the limitations in the NLGA circumscribing federal court jurisdiction to issue injunctions in cases involving or growing out of labor disputes. 29 U.S.C.A. §§ 101, 104 (West 1973). These limitations, however, are not absolute. The NLGA is not an impenetrable barrier that completely excludes every other federal law from any case which could be said to be related, no matter how remotely, to some "labor dispute," even though the interests and purposes of the other legislation are directly at stake. This rigid and absolutist conception of "NLGA *über Alles*" advocated by Local 1814 is directly at odds with principles espoused by this Court and followed in the circuits concerning the appropriate accommodation of two seemingly antagonistic federal statutory schemes.

No federal statute "is an Iland, intire of it selfe"; each "is a peece of the Continent, a part of the *maine*" of federal law embodied in the United States Code.[15] "Frequently the entire scope of Congressional purpose calls for careful accommodation of one statutory scheme to another . . . ." *Southern S.S. Co.* v. *NLRB*, 316 U.S. 31, 47 (1942). There is a duty imposed upon all federal tribunals to harmonize diverse legislative schemes to give effect to the congressional policies and objectives embodied in each. *Morton* v. *Mancari*, 417 U.S. 535, 551 (1974); *Silver* v. *New York Stock Exchange*, 373 U.S. 341, 357-58 (1963); *McLean Trucking Co.* v. *United States*, 321 U.S. 67, 80 (1944). However, when the statutes are in irreconcilable conflict, one obviously must prevail. In making that choice, the Second Circuit in this case did not fashion its own peculiar methodology but applied the prevailing test established by this Court: "Where there is no clear intention otherwise, a specific statute will not be controlled or nullified by a general one, regardless of the priority of enactment." *Morton*, 417 U.S. at 550-51 (citations omitted); *see also Radzanower* v. *Touche Ross & Co.*, 426 U.S. 148, 153 (1976).

The NLGA is no stranger to the process of statutory reconciliation. "The prohibition of the NLGA must give way when necessary to

[15] JOHN DONNE, Poem No. 17, DEVOTIONS UPON EMERGENT OCCASIONS (1624).

enforce a duty specifically imposed by another statute." *Pittsburgh & Lake Erie R.R.* v. *Railway Labor Executives' Ass'n*, 491 U.S. 490, 514 (1989). The NLGA's limitations on the equity powers of federal courts are general proscriptions. *Brotherhood of R.R. Trainmen* v. *Chicago R. & Ind. R.R.*, 353 U.S. 30, 41-42 (1957). Consequently, specific grants of injunctive powers bestowed upon the federal judiciary to enforce compliance with other Acts of Congress take precedence over the NLGA's more general anti-injunction scheme. *See id.* at 41-42; *see also Graham* v. *Brotherhood of Locomotive Firemen & Enginemen*, 338 U.S. 232, 239-40 (1949).

Local 1814 concedes, as it must, *see* Pet. at 4, that the NLGA must yield in order to effectuate the policies and purposes of federal labor and railway labor legislation. *Boys Markets, Inc.* v. *Retail Clerks Local 770*, 398 U.S. 235 (1970); *Burlington N.R.R.* v. *Brotherhood of Maintenance of Way Employes*, 481 U.S. 429 (1987). Local 1814, however, would establish a special preserve for the NLGA that would restrict its susceptibility to the process of statutory accommodation. In Local 1814's view, the NLGA supersedes all non-labor law, since "the only accommodation that can be made is with other labor statutes." *See* Pet. at 20. This formulation ignores the wealth of authority that has subordinated the NLGA to other non-labor enactments.[16] "[T]he Norris-LaGuardia Act's limitations on injunctive relief in cases 'involving labor disputes' do not apply where the requested relief represents a bona fide effort to enforce another federal statute." *50 Mile Container Rules*, 21 Shp'g Reg. Rep. at 559.

---

[16] *United Mine Workers* v. *Pennington*, 381 U.S. 657 (1965) (federal antitrust statutes); *Allen Bradley Co.* v. *Local 3, IBEW*, 325 U.S. 797 (1945) (same); *Los Angeles Meat & Provision Drivers Local 626* v. *United States*, 371 U.S. 94 (1962) (same); *Consolidated Express, Inc.* v. *New York Shp'g Ass'n*, 602 F.2d 494 (3d Cir. 1979), *vacated and remanded*, 448 U.S. 902 (1980), *on remand* 641 F.2d 90 (3d Cir.), *mandamus & prohibition denied sub nom. In re International Longshoremen's Ass'n*, 451 U.S. 905 (1981) (same); *Intercontinental Container Transp. Corp.* v. *New York Shipping Ass'n*, 426 F.2d 884 (2d Cir. 1970) (same); *50 Mile Container Rules*, 21 Shp'g Reg. Rep. (P&F) 544 (FMC 1982), *pet. for review denied sub nom. New York Shipping Ass'n* v. *FMC*, 854 F.2d 1338 (D.C. Cir. 1988), *cert. denied*, 488 U.S. 1041 (1989) (federal shipping statutes); *United States* v. *ABC Containerline N.V.*, 572 F. Supp. 150 (S.D.N.Y.), *appeal dismissed*, No. 83-6354 (2d Cir. Dec. 13, 1983) (same); *cf. Burlington Truck Lines* v. *United States*, 371 U.S. 156 (1962) (in Interstate Commerce Act setting, cease and desist relief is appropriate, even when case involves a labor dispute.)

The Second Circuit's treatment in this case of the interplay of the NLGA and RICO conforms to the usual and accepted norms of statutory reconciliation that federal courts are expected to follow in carrying out their judicial responsibilities. In accomplishing its mission the Second Circuit adhered to well-settled legal principles previously enunciated by this Court. There is no decision of this Court or of any other court with which the Second Circuit's decision conflicts. No court has ever invoked the NLGA to nullify the remedial powers RICO bestows upon the federal judiciary. Despite Local 1814's strained and implausible efforts to manufacture a legal conflict, the fact of the matter is that none exists.

2. No Paramount Federal Question

Strained interpretations pervade Local 1814's entire position in this litigation. Local 1814 does not suggest, nor could it, that compliance with a court order disqualifying an individual from employment would constitute a breach of the longshore labor contract.[17] Indeed, its counsel advised the district court that Local 1814 does not object to the portion of the NYSA Consent Judgment calling for NYSA and its members not to employ class (a) individual defendants found to have engaged in RICO violations. What Local 1814 finds objectionable is the disqualification from waterfront employment of class (b) and class (c) individuals.[18]

---

[17] The contract does not contain any restriction against compliance with a lawful injunction restricting employment of certain individuals. In the longshore industry the basic requirements for employment have long been dictated by the Waterfront Commission, the agency Congress has entrusted to regulate employment and investigate criminal activity on the waterfront. *See* N.Y. Unconsol. Laws §§ 9801-9937 (McKinney 1974 & Supp. 1992). The Waterfront Commission may remove persons from the longshoremen's registry—i.e., bar them from employment—for a variety of reasons. These Waterfront Commission determinations have never been the subject of the parties' grievance and arbitration procedure. There is simply no provision in the labor contract which entitles a disqualified longshore worker to continued employment.

[18] Class (b) consists of members of organized crime groups, and class (c) individuals aiding and abetting those in the first two classes in the commission of felonies in the Port. It is unlikely that anyone in these two classes could be a longshore worker, since that person could not qualify for Waterfront Commission registration and, thus, would not be eligible to work on the waterfront. *See* Waterfront Commission Compact § 1, art. VIII, ¶¶ 3, 5, N.Y. Unconsol. Laws §§ 9829, 9831 (McKinney 1974).

Local 1814 believes that this disqualification would stem not from the remedial powers of the district court under RICO "but from the agreement of NYSA and the government to which the court only gives its approval." *See* Pet. at 8 n. 5. In other words, the union believes that in the NYSA Consent Judgment NYSA and its members are not agreeing merely to comply with a court order of employment disqualification, which in the union's view would "exceed the powers of a district court under RICO," *id.* at 8 n. 5, but are themselves creating the class (b) and class (c) disqualifications by agreement with the Government. It is this latter scenario which Local 1814 contends would constitute a unilateral change in the terms of the longshore collective bargaining agreement, giving rise to an arbitrable dispute. *Id.* at 8.[19]

---

[19] Local 1814's suspicions are unfounded. NYSA and its members have consistently maintained their understanding that the NYSA Consent Judgment is an agreement by NYSA and its members to abide by a court order in the RICO Action enjoining individuals in the three designated classes from employment on the waterfront. This understanding is repeatedly articulated in the express language of the consent judgment:

> At any time after completion of litigation in the District Court in this case, plaintiff [the government] may provide to NYSA a list, *approved by this court, of individuals prohibited* from seeking, obtaining, or remaining in employment on the Waterfront (A-6).
>
> * * *
>
> With respect to subdivisions (b) and (c) of this paragraph, the Government may seek entry of an order *in accordance with 18 U.S.C. § 1964(a)* . . . which shall state the standards and procedures to be utilized in determining whether *an individual . . . should be prohibited* from seeking, obtaining, or remaining in employment on the Waterfront (A-6).
>
> * * *
>
> NYSA will not knowingly employ in any capacity any individual whose name appears on the list . . . for so long as the Court's *injunction against the individual* remains in effect (A-7).
>
> * * *
>
> *Any order issued by the Court against any individual proscribing said individual from seeking, obtaining, or remaining in employment on the Waterfront* shall contain a provision prohibiting said individual from commencing an action to challenge the order in any court or forum except this one.

(Emphasis added). The NYSA Consent Judgment is no more than an acknowledgement by NYSA and its members that though dismissed from the RICO Action, they will be bound by future court orders of employment disqualification entered by virtue of the exercise of the district court's authority under RICO, *see* 18 U.S.C.A. § 1964(a) (West 1984), not by virtue of any authority vested in the court by the consent of NYSA and the Government.

If Local 1814 is correct that the district court lacks authority under RICO to disqualify individuals falling within classes (b) and (c), no injunctive order of disqualification would ever issue, Local 1814's fears would never materialize, and no labor dispute would ever arise. If, on the other hand, the district court were to reject NYSA's understanding of the agreement embodied in the NYSA Consent Judgment and issued an injunction founded not on its inherent authority under the All Writs Act or the specific grant of authority under the RICO statute, *see* 18 U.S.C. § 1964, but on a putative grant of power arising out of the settlement agreement, a serious legal question would arise concerning the ability of private parties by agreement to confer upon a federal court powers over third parties not granted to it by the Constitution or by Congress.

The upshot of all of this is clear: at this point Local 1814 suffers considerable confusion as to the meaning, effect, and validity of the NYSA Consent Judgment. Until these issues are resolved, all that exists is Local 1814's belief, which may or may not be vindicated at some later time, that NYSA is about to breach the collective bargaining agreement by entering into the consent judgment. Whether this belief will ever ripen into an actual controversy depends upon what the consent judgment means and whether, if Local 1814's interpretation of that settlement agreement were to prevail, it is legally valid. The district court, not an arbitrator, is the appropriate tribunal to decide these threshold issues.[20]

This case would be hardly problematic were it not for the NLGA. But the ability of Local 1814 to invoke that statute depends upon the presence now of an actual labor dispute, not some belief or suspicion that NYSA or its members may at some future time take a position on the interpretation of the labor contract that is at odds with Local

---

[20] An arbitrator's realm of competence is "limited to resolving individual contract disputes which rarely involve broad public interest considerations." *United States* v. *IBT (Star Market Co.)*, 954 F.2d 801, 809 (2d Cir. 1992), *cert. denied*, 112 S. Ct. 2993 (U.S. June 22, 1992) (No. 91-1675), and does not embrace consideration of the meaning and validity of a RICO consent judgment, which are matters falling exclusively within the jurisdictional competence of the federal courts. *United States* v. *IBT (Yellow Freight Systems, Inc.)*, 948 F.2d 98, 106 (2d Cir. 1991), *petition for cert. filed*, 60 U.S.L.W. 3843 (U.S. May 29, 1992) (No. 91-1938).

1814's.[21] Indeed, Local 1814 itself admits that "the Consent Judgment, *once in place*, *could* create rights and duties that would override the provisions of the collective bargaining agreement." *See supra* p. 5 (emphasis supplied). Under Local 1814's own formulation, the Consent Judgment *could* only do so if NYSA's understanding of the meaning of that settlement agreement does not prevail.

If NYSA is correct that all the consent judgment does is impose a duty on NYSA and its members to abide by a court order exercising remedial powers granted by RICO, then Local 1814 concedes no violation of the labor contract would arise. Even if NYSA's interpretation does not prevail, no labor dispute can arise unless the district court rejects Local 1814's contention that the consent judgment exceeds the powers of a district court under RICO or concludes that, despite this limitation, private parties can by consent confer on the court that which the applicable legislation does not bestow.

Only if both NYSA's interpretation fails and the district court nonetheless concludes that the consent judgment is valid, would Local 1814's formulation possibly mature. Perhaps, after these two issues have been resolved, the theoretical difference of opinion advanced by Local 1814 might ripen into an actual arbitrable labor dispute. This possibility would depend on occurrences yet to unfold. However, until then, no labor dispute can arise, and the NLGA does not present any

---

[21] The proscriptions of the Norris-LaGuardia Act are triggered only if there exists in fact a real, concrete, and fully-ripened labor dispute. *Cf. Chicago Typographical Union No. 16* v. *Chicago Sun-Times, Inc.*, 935 F.2d 1501, 1507-08 (7th Cir. 1991) (a union's belief, even if vindicated by subsequent events, that management held a different view than the union's does not constitute an arbitrable dispute; the disagreement must ripen into an actual controversy); *Chicago Typographical Union No. 16* v. *Chicago Sun-Times, Inc.*, 860 F.2d 1420, 1425-26 (7th Cir. 1988) (imputing an interpretation of the labor contract to management does not create an arbitrable issue; the union must show that management "has acted or has threatened to act in a manner inconsistent with the Union's interpretation of the contract"); *Alpha Beta Co.* v. *Retail Store Employees Local 428*, 671 F.2d 1247, 1249-50 (9th Cir. 1982) (management's suspicion that union was preparing to take a position in conflict with management's does not create an arbitrable dispute over the interpretation of the labor contract).

obstacle to the district court's exclusive authority to address these two issues in the first instance in the RICO Action.[22]

The concerns that may have prompted Local 1814 to institute this Labor Action may completely disappear when it becomes apparent that Local 1814's fears about the role of a federal court in a RICO Action are completely unfounded. NYSA has more faith in the ability of a federal court in exercising its remedial equity powers under RICO to give due regard to any labor interests that may be implicated. Certainly, a federal court is better equipped than an arbitrator to balance the sensitive and delicate interplay of RICO's remedial purposes and policies with any labor interests that may be at stake.

The Second Circuit in fashioning a limited exception to the NLGA in this case did not deviate from the accepted and usual norms that guide the federal judiciary in accommodating conflicting federal statutes. Local 1814's suggestion that when the NLGA is involved, only this Court is authorized to engage in this reconciliation process, *see* Pet. at 22-23, betrays a critical misconception of the role of this Court. It does not sit as a Super-Legislature to enact exceptions to the NLGA or to any other federal legislation. Its function is to review judicial decisions of special moment that involve substantial questions of federal law that transcend the interests of the immediate litigants. *Rice* v. *Sioux City Memorial Park Cemetery, Inc.*, 349 U.S. 70, 79 (1955). Any reconciliation of the NLGA with other federal enactments, therefore, must perforce be initiated at a lower federal court level. Whether the lower court's disposition should be reviewed by this Court does not depend upon the fact that the NLGA, or for that matter any other particular federal statute, is involved but whether the lower court's determination concerns a substantial issue of federal law of paramount public importance.

This case is the first instance in which a federal court has had to accommodate the provisions of the NLGA and RICO. No other RICO/NLGA cases are on the horizon, and it does not appear that the

[22] This resolution of the threshold question identified by NYSA, *see supra* p. i, disposes of the controversy in this case without the need to address the questions framed by Local 1814. Review is inappropriate when the case can be decided on a ground not raised in the certiorari petition. *See The Monrosa* v. *Carbon Black Export, Inc.*, 359 U.S. 180 (1959).

interplay of RICO and the NLGA will ever develop into the type of recurring phenomenon that is characteristic of an important question worthy of review by this Court. *Maryland* v. *United States*, 381 U.S. 41, 43 (1965); *Massachusetts Trustees* v. *United States*, 377 U.S. 235, 237 (1964).[23] The fact of the matter is that whatever importance this case may have does not extend beyond the parochial interests of the disputants. Local 1814's efforts to implicate the rights of the Devil in the controversy does not broaden the significance of the case. "Giving the Devil his due" is hardly a valid reason for granting certiorari.

CONCLUSION

Since the decision of the Second Circuit in this case does not conflict with any decision of this Court or any other court and resolves an issue of limited scope and importance in a manner consistent with settled principles of law, there is no reason for Supreme Court review. The petition for a writ of certiorari should be denied.

Dated: New York, New York
August 21, 1992

Respectfully submitted,

CONSTANTINE P. LAMBOS (Counsel of Record)
DONATO CARUSO
LAMBOS & GIARDINO
29 Broadway (9th Floor)
New York, New York 10006
(212) 943-2470

Attorneys for Respondent
New York Shipping Association, Inc.

---

[23] An issue of first impression is not a worthy candidate for review by this Court. It is preferable to await further study and analysis by the lower courts so that the issue will be exposed to the type of percolation in the lower courts necessary to assure that the essence of the issue has been extracted and properly refined and illuminated before it is addressed by this Court. *McCray* v. *New York*, 461 U.S. 961, 963 (1983) (Stevens, J.).